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*From the Author*

ANTAGONISM

OF

LAW AND MEDICINE IN INSANITY,

AND ITS

CONSEQUENCES.

AN INTRODUCTORY LECTURE.

BY

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*Οὐδεις ἐκὼν κακός.*

*Plato.*

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## LAW AND MEDICINE IN INSANITY.

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PRACTICAL Courses of Lectures on Insanity have been given occasionally in London, and regularly in Edinburgh,<sup>1</sup> for several years past, but the course I deliver stands alone in the United Kingdom, as a systematic course on the theory and practice of mental diseases and defects, in being based on medical psychology. If any arguments were needed that such a course should form part of the medical curriculum, and be delivered in every medical school of the United Kingdom, recent proceedings in the English Courts of Law and in the House of Lords would amply supply them. From those proceedings, we learn how distinct and complete is the antagonism between law and medicine, as to the principles of mental science and its applications to mental diseases and defects. Medicine declares that insanity is a physical or corporeal disease; law declares that it is not. Medicine says that insanity and imbecility are different conditions; law that they are analogous. Medicine maintains that a theoretical and practical study of mental diseases and defects is necessary to the proper understanding and detection of mental disease or defect; law denies this, and says it is a fact to be determined by any dozen of ordinary men in consultation on the case. Medicine says a man may be insane and irresponsible, and yet know right and wrong; law says a knowledge of right and wrong is the test of both soundness of mind and responsibility to the law. Medicine says, restrain and cure the insane and imbecile offender against the law; law says, hang, imprison, whip, hunger him, and treats medical art with contempt. Thus law, as recently expounded in the English Courts and the English Legislature, is entirely antagonistic to medicine on all those questions of mental science which involve the freedom and well-being of the imbecile and insane, and which often determine whether they shall die an ignominious death or not. This antagonism is a very serious matter therefore to the insane, their friends, and families; more serious to the judges and legislators of our country; and not without deep interest to the medical profession. For with such direct antagonism to medical doctrines and practice on the side of law, the existing prejudices in the mind of the public, and which have been exhibited in very high quarters, will be more deeply rooted; so that we shall have greater difficulties to encounter in treating the insane, in bearing witness to their infirmities in courts of law, and in enlightening the public on a subject which most deeply concerns it. Let us examine, then, how this antagonism arises, and what are its results.

You are all, doubtless, aware of the recent legal proceedings in which the mental condition of a young English gentleman was a subject of inquiry. These proceedings were so scandalous, that Lord Westbury, the Lord Chancellor of England, introduced a "Lunacy Regulation Bill" into the House of Lords, with the object of preventing the recurrence of them; and it was during the discussion of that bill on the second reading, and when in committee, that that dignified and learned lord expressed his views as to the nature of insanity and imbecility, and the legal position of the insane. He remarked at the second reading that—  
"The introduction of medical opinions and medical theories into this subject,

<sup>1</sup> Dr Conolly lectured at Hanwell in 1842; Dr Browne at the Crichton Institution in 1851. In Scotland the first lectures were given by Sir A. Morrison in 1827.

has proceeded upon the vicious principle of considering insanity as a disease, whereas the law regards it as a fact which can be ascertained by the evidence, in like manner as any other fact. Therefore, we empanel a jury of ordinary men, and call upon them to try the question by proof of the habits, the demeanour, the conversation, and the acts of the alleged lunatic."<sup>1</sup> Now, in medicine, we not only adopt this principle denounced as vicious by the learned lord, but every moment that we shall meet together during the next three months will be occupied with practical illustrations of it. We cannot, in fact, study insanity or mental defects practically in any other way; while the proof of the value of the principle is exhibited in the vast ameliorations in the treatment of the insane, which have been secured of late years because the profession has persistently developed the truth that insanity is a disease. In the face of such facts it would be fair to infer that the opinions of the Lord Chancellor have been misreported; but this would be unwarranted, for, when the House of Lords went into committee on the bill, he reiterated the doctrine, and declared that it was an evil habit to consider insanity as a disease. "An evil habit," he observed, "had grown up into a precedent with judges and juries of assuming that insanity was a physical disease, and not a subject of moral inquiry," meaning probably by physical what we express by corporeal. And this "habit" or doctrine as to the nature of insanity is "evil" and "vicious" in the judgment of the Lord High Chancellor because of its results; for it has led judges and juries to assume farther, that they are "bound to accept medical testimony" in reference to insanity, and thus "were forced to adopt the speculative views of members of the medical profession instead of their own moral conclusions," as to whether a person whose civil rights and responsibilities were involved was insane or not, whereby the administration of justice between man and man and society and man was hindered. The learned lord was therefore strictly logical, when he affirmed that it was absurd to suppose medical science had any special business with the detection of insanity. "Was it indispensable," his lordship asks, "that persons should have studied in the schools of medicine, listened to lectures, and walked the hospitals, in order to form a conclusion whether a man was or was not a lunatic? Yet, by the existing law, that was the very absurdity committed."<sup>2</sup> The boldness of this opinion must have surprised those familiar with mental diseases, as much as its antagonism to all experience of the imbecile and insane. It is true enough that there is a stark, staring madness which hardly any man could mistake for sanity; but it is not such instances which give rise to doubts, legal or medical; these arise as to much more subtle and insidious forms of disease, and try the acuteness of the most experienced. I will not say, however, that this boldness of statement is, *prima facie*, a proof that the Lord High Chancellor has not had an extensive experience of the insane, or that his doctrines, so explicitly advanced as to the nature of insanity, are not the result of the most careful investigation. They were expressed by him as the highest legal functionary, and in the exercise of his duties as the official guardian of all lunatic and insane persons in England; and we must therefore assume that he has not formed or expressed them without the gravest deliberation, nor without a deep conviction as to the momentous results which his opinions would involve. Let us then examine on what grounds he deliberately and judicially sets aside the doctrines of medicine, when directing the legislation of the empire.

The fundamental doctrine now almost universally held by physicians and physiologists, that insanity is a disease of the brain, is of high antiquity. It is contained in the oldest Greek classics on medicine and philosophy. It is true that in ancient Greece, and probably from time immemorial throughout the East, lunacy, epilepsy, and like diseases were popularly attributed to spiritual beings.

<sup>1</sup> See *Times*, 12th March 1862.

<sup>2</sup> *Ibid.*, 25th March 1862.



Hence epilepsy and lunacy were termed the sacred disease, and hysterically delirious girls were believed to be inspired, and used as discoverers of the unknown, much in the fashion of *clairvoyantes* of the present day. The supposed character of these beings varied in different countries; in æsthetic Greece they were demons in a good sense—gods or heroes; in the more ascetic regions of Syria and Palestine they were demons in a bad sense—or devils. In either case, the cure of the lunatic and epileptic was undertaken by a class of professional exorcists, who promised for a consideration to dispossess the demons by sacred and mysterious processes. But this was not the medical view, for in the Hippocratic writings there is an essay “on the Sacred Disease,” in which these popular superstitions and delusions are controverted and ridiculed, and the strange, and, to the ignorant, awful doings of the sick shown to be due to disorder of the functions of the brain. That this was also the scientific doctrine as to mental disorders, is proved by the fact that it was taught by Plato—you will find it in the sixty-eighth chapter of the *Timæus*. Further, that it was also as current with intelligent laymen, as now is shown by the story of Hippocrates and the citizens of Abdera, who sent for him to cure Democritus of his supposed madness. Since this period the doctrine has never been lost; so that I may venture to affirm that insanity has been regarded by the profession and educated members of society in Europe as a corporeal or “physical” disease, for at least 2300 years.

The doctrines of modern writers vary much, without doubt, and in too many respects are contradictory. It is true, nevertheless, that all the best authorities in the United Kingdom accept what has been termed the somatic or corporeal doctrine of insanity, and hold that cerebral disorder or defect is associated with every form or manifestation of mental disorder or defect. And if this inseparable association of cerebral and mental activity be true as to all morbid mental states, it is equally true as to all healthy mental states. Hence the modern physiological principle as laid down in all our most recent works on physiology is, that no change in the consciousness whatever—whether it be sensation, perception, ideation, or volition—takes place without coincident, and necessarily coincident, vital changes. Nor is the assent of modern metaphysicians of high reputation withheld from these doctrines, although, perhaps, with varying degrees of fulness. It would have been gratifying to have discovered any traces in the Lord Chancellor’s speeches, of a dispassionate inquiry into the truth of this ancient and established doctrine, and into the number and validity of the facts upon which it is founded; but I deeply regret to say that no such traces can be found; so that we are inevitably driven to the conclusion that the noble lord has condemned it, and proceeded to legislate in antagonism to it, without such calmly judicial inquiry as is due alike to the nation and to the profession. And the regret is all the greater because nothing is so open to proof by any man of ordinary intelligence, who will discard all speculative and preconceived opinions, and examine it as purely a question of fact.

The question is, are all the mental faculties and capacities, without a solitary exception, inseparably associated with corresponding vital changes going on within the body, so that, without these occurring, those cannot be manifested? Experience, observation, and experiment must answer the question. Let the inquirer therefore ascertain for himself what changes occur in his modes of mental activity under the influence of certain bodily conditions, or of agents modifying his bodily conditions. For example, when engaged in some mathematical calculation demanding the clearest exercise of his intellect, let him drink a glass or two of bitter beer or smoke a little tobacco and opium, and he will find that he has become incapacitated for completing his calculation. Or let him breathe a few whiffs of nitrous oxide gas or chloroform vapour, and, in a

few seconds, he will find the drug has taken his reason prisoner, and he becomes instantly and absurdly insane. Or let him go farther in his doses of these things—drink his gallon of beer, take his grains of opium, breathe his chloroform more abundantly, and he will discover how entirely all consciousness has departed from him, if he will but accept the testimony of those around him. If he will not accept that, then let him watch the results of these drugs when used on other men, and he will have the testimony of his own senses to the facts; and beyond this no proof is needed or possible, except that which diseased states so abundantly afford.

But it may be objected that, although these facts be admitted, they only prove what few deny,—namely, the inseparable connexion of body and mind; that the morbid mental states depend upon morbid states of the brain is not proved at all. Now, to learn what part of his bodily frame is thus so influenced by drugs or disease, that feebleness, or disorder, or abolition of his mental powers results, the inquirer must examine into previous investigations on this point, and test their accuracy by investigations of his own. If the Lord Chancellor had done this, he would have found that the corporeal theories have become more definite as physiological knowledge has advanced. Thus, in the time of Plato, the heart was held to be the seat of one kind of mental activity, the liver of another, and the brain of a third.<sup>1</sup> But modern research has allotted to each organ and structure of the body its duty; and has determined that all those vital changes which are coincident with mental states go on in the encephalon, or that part of the body contained within the skull; and not in the heart, which distributes the blood,—nor in the lungs, which aerate it,—nor in the stomach, which supplies the digested material for its renovation,—nor in the liver, or kidneys, or skin, which purify it from hurtful things,—nor in the generative glands, which minister to the maintenance of the species. Then, if he examined the anatomy of those organs by which man attains a knowledge of the external world and acts upon it, he could trace the nerve-cords from the eyes, and ears, and nose, and mouth, and skin, by and through which he receives the impressions of sense, to the same encephalon; while from that same encephalon he can trace the cords running outwards to the mechanism by which he moves his body and limbs, and organs of sense. In this way the proof of the cerebral functions would be established. Then come the experiments of nature as to those functions, open to investigation chiefly to the physician, and manifested in the form of dreaming, delirium, coma, and the like, as well as in that of mental disease and defect. So that, whether we consider the mental states, in relation to the body in general, or the brain in particular, the doctrine of medicine has the most solid foundation in facts. And yet these facts only constitute a part of that foundation. Physiologists and physicians look upon man as what in truth he is,—an animal,—high above his fellow-creatures, but still an animal, and differing from those below him in mental faculties not so much in kind as in degree. Hence he can experiment and investigate as to his own nature in the animal world below him; nay, he can descend to the plant world, and there he finds that the same drugs which affect his powers benumb and paralyze the plants.

These, then, are the proofs of the medical doctrine as to mental diseases and defects: they are facts which challenge every possible investigation and inquiry, and must be shown to be fallacious by those who take upon themselves to deny the doctrine. Now, the accuracy of medical facts is, in truth, denied by the opposers of the doctrine. Thus the Lord Chancellor remarked, when his bill was in committee,—“But even medical men sometimes fell into egregious errors: they never made allowance for peculiar idiosyncrasies. A celebrated Scotch judge

<sup>1</sup> Timæus, chap. 44–47.



administered justice for many years with great skill and knowledge of the law, and, after his death, which took place suddenly, a post-mortem examination was held, when it was proved that he had been subject to extensive softening of the brain, and that it had been going on for several years. If he had not been misinformed, something similar, though not, perhaps, to so great an extent, happened recently in the case of one of our own judges. (Hear.)"<sup>1</sup> It would be idle to deny that all of us are very liable to err. Medicine is confessedly a conjectural art; yet I think we might fairly claim indulgence for errors in opinion from one whose chief duty is to decide upon differences of opinion on matters much more under direct cognizance than the phenomena of life. But in this particular instance the alleged fact is incredible, both as a whole, and as to details. None of us would or could pretend to deduce how many years a softening of the brain had been going on from a simple inspection after death of the brain affected, because such a conclusion cannot be so made. Nor, I am assured, is it true in fact that a Scotch judge had such softening for many years, while administering justice. The case quoted by the Lord Chancellor is, I suspect, very much like the famous case of the vomiting of three black crows. It is probably a version of that of a Scotch judge who administered justice for *three months*, died suddenly, and was found to have—not extensive softening of the brain in general—but circumscribed softening or softenings. These, it is well known, are compatible with a certain amount of mental capacity; the faculties are really somewhat impaired, but not very obviously or strikingly to a superficial observer, because the disease is local, or limited to one hemisphere. We have an analogous case when a man is blind of one eye from defect in the optic nerve, and neither he nor his friends know of the failing in vision until a medical practitioner is accidentally consulted and discovers it; and it would be just as reasonable to infer from such cases that the optic nerve is not necessary to perfect vision, as that the brain is not necessary to perfect thought and will, because a man with this kind of circumscribed softening could think and act rationally. Examples more strikingly exceptional than these occur in practice, without shaking in any degree our general conclusions as to the functions of the brain. A very dear and distinguished friend of mine suffered from palsy of the legs—the result, probably, of a kind of softening of the encephalon. After having been a helpless paralytic for several months, his brain underwent such a change that he had the hallucination that he was not in his own house; and while in this state he rose from his chair and walked.

The facts we have to deduce from are indeed so numerous, and the conclusions so certain, that there must be a special difficulty experienced by men constituted mentally like the Lord Chancellor in appreciating the evidence upon which the somatic doctrine of insanity rests. This is probably due partly to the prejudices of education, but mainly, I think, to the legal habits of thought as to the nature and force of evidence. Every man has actually within his own consciousness the strongest proof of the doctrine: for, since every change in that consciousness corresponds to vital changes, without which it cannot occur, these conscious changes are to him, thus interpreted, the most conclusive proof of vital changes—nay, the only direct proof of existence. Hence the truth of the Cartesian proposition, "Cogito, ergo sum." But as no man is ever conscious until he lives, and as life in the individual, so far as we know, precedes thought (for there is no proof whatever of intra-uterine consciousness), we can reverse the proposition with equal truth, and say, "Sum, ergo cogito." Both conclusions rest alike on the testimony of that consciousness, which is nothing more than our experience of the vital changes appropriate to consciousness. When a man observes or listens to the experience of other men, the evidence of such vital changes is either hearsay or

<sup>1</sup> *Times* newspaper, 25th March 1862.

circumstantial, and therefore liable to all the fallacies to which these kinds of evidence give rise. Still, in the ordinary affairs of life, we infer that if a man is writhing, he suffers pain; or if he tells us he is perplexed and confused, we can entertain no reasonable doubt of the truth of his statement. In either case, we infer that those vital changes are occurring in his encephalon, which coincide with the feeling of pain or of perplexity and confusion of thought or speech. But the Lord Chancellor does not comprehend the value of such evidence in the detection of mental disorder; so that, when he desired to convince the House of Lords that the plan of receiving the evidence of physicians ought not to be adopted in cases of insanity generally, he said,—“If there were any process by which, in the case of a lunatic, a man’s skull could be cut into, and the different coats and linings of the brain exposed, so as to exhibit whether they were too much gorged or the circulation impeded, there might be something in the plan. But medical science had not yet attained that pitch of development, and medical men imagined external things to be the indices of things unseen. They therefore made issues, hardly less important than those of life and death, depend on mere uncertainty.”<sup>1</sup> Nothing could be more inconclusive than this argument, except the view which the Lord Chancellor entertains of the evidence by which the scientific and practical questions of medicine are solved. The fact is, that a dyspepsia is determined by the same kind of evidence as an insanity. All morbid changes in the body whatever, considered as ultimate phenomena, are unseen; so that, if we had ascertained the structure of the brain to the minutest fibril, and could lay it bare in the living man in all its details, we should still have to accept “external things as the indices of things unseen.” The subtle forces of life and mind operating in the brain are only to be determined ultimately as they influence consciousness in ourselves, or as they cause those changes in the body or its movements which are the indices of changes in the consciousness of others. We might as well look for the electric or magnetic fluid which carries the expression of our thoughts along the telegraphic wire. In every disease, whether it be a simple inflammation or the most insidious insanity, this is our position. Nor, indeed, is there any other kind of evidence possible, even in the most ordinary cases of this kind. If the police find a man uproarious, reeling about, and smelling of drink, they conclude he has been drinking, and, if they reason at all, will trace the drink from his mouth to his stomach, and from his stomach to his lungs and brains, where it is doing its poisonous work, and rendering him temporarily insane,—thus judging that external things are the indices of things unseen.

Let us now examine the results of legal pathology. When the Lord High Chancellor’s bill was discussed in committee in the House of Lords, he said,—“The humble attempt which he was making had for its object to discover where the abuses and the causes of error lay which rendered such inquiries [as that of Mr Windham] generally odious, and the examination by mad-doctors little better than a farce. The effort was undoubtedly a novelty; but if it were sanctioned by their lordships, it would go far to take out the evil by the roots, and prevent the recurrence of scenes which were a reproach to the courts of this country.”<sup>2</sup> Zeal as a radical reformer (not a discoverer) of medical error must be conceded to the learned lord; but it is to be feared that his zeal is too unenlightened and too prejudiced to be effectual for the good ends he aims at. If medicine be right and law wrong, nothing but confusion worse confounded can result from the Lord Chancellor’s efforts to apply legal principles, and regulate the doings of “mad-doctors” in the courts. In Mr Windham’s case the facts are simple enough. Almost as soon as he came of age he entered upon a career of folly and extravagance. In particular, he contracted marriage with a woman

<sup>1</sup> *Times*, 25th March 1862.

<sup>2</sup> *Ibid.*



of easy virtue, and lavished thousands upon her in gifts and settlements. An inquiry was instituted, and the question submitted to the jury by the presiding judge, a Master in Lunacy, was whether this young gentleman was of unsound mind or not; that is, whether his mind was morbid, so as to disqualify him for the management of his affairs. It was not whether he was imbecile in judgment or incapable, but whether he was unsound in mind. And that this was put with deliberate regard to the *dicta* of legal authorities is proved by the opinions which Lord Chelmsford expressed in his highly lucid speech on the motion for the second reading of the Lord Chancellor's bill,—“Under the existing law, no person,” he said, “however extravagant, foolish, or prodigal, could be made the subject of a commission of lunacy unless his acts were such as to lead a jury to the conclusion that he was of unsound mind; and a verdict founded on imbecility or weakness of mind only would be set aside as contrary to law.”<sup>1</sup> Further: in his bill the Lord Chancellor used the terms “unsoundness” and “imbecility” of mind as equivalent terms; and, in reply to Lord Chelmsford, remarked,—“It is through having regard to the nature of the alleged lunacy that the mischievous practice has been introduced of carrying back the inquiry in this manner [as in Mr Windham's case]. My noble and learned friend seemed to imagine that there was some peculiarity in the law respecting idiocy. But in their results idiocy and lunacy are precisely the same: originally there was a difference, but it has long since disappeared.” And, as an illustration of the farcical nature of medical evidence, he quoted that of a medical practitioner who said he knew “the alleged lunatic” when he was a child four years old, and that he was of opinion that he was then of infirm mental organization, and that the infirmity was congenital; that he had always shown evidence of congenital mischief such as he should have expected to ripen into idiocy in after age. This evidence of congenital defect, in the opinion of the Lord Chancellor, was a “farce,” because the proofs of “lunacy” at twenty-one were carried back seventeen years.

Such, then, being the legal dictum, how far does it coincide with medical science and common sense? The law of England considers a man incompetent to manage his property until he is twenty-one years old: till that age he is a sort of physiological imbecile as to property. There is nothing physiologically peculiar to the exact age of twenty-one in the attainment of wisdom; but it is a matter of common observation, that the mental faculties (which are hardly manifested at birth and during early infant life) are more and more developed as age advances and experience of the world is attained, so that the average individual is held to “arrive at years of discretion” when he completes his twenty-first year. This development of the faculties varies in degree, however, in different individuals; so that some, like Mr Peabody, the eminent American merchant, are equal to the affairs of life at so early an age as fifteen, some at a much later age than twenty-one; nevertheless these also attain to sound judgment, for the development is merely delayed. In others, however, there is not merely retardation, but arrest of development. This may occur in early infancy, and the man of twenty-one be an idiot—as devoid of mental power as an infant; or in boyhood, in which case he may be a childish imbecile as a man; or at puberty, when he will be a mischievous imbecile, strong as to his appetites and passions, weak as to his self-control; or he may be born idiotic or imbecile, the consequence of injuries acting upon him when in his mother's womb. If, then, the capacity of a man to manage his property be brought in question, in consequence of his prodigalities and follies, and the aid of medical science is sought, the scientific inquirer will determine, first, from his actions, what are the defects in his mental powers; and then seek, by an examination of his person, and an inquiry into his

<sup>1</sup> *Times* newspaper, 12th March 1862.

past life, whether corporeal causes have been at work so as to lead to defective organization and development of the brain; and whether such defective development was the cause of his indiscretions, and is likely to continue as such for the future. These conclusions can only be drawn from experience in similar cases of imbecility. Now, the causes are various. There may have been congenital defect, or a brain fever in childhood, or an injury to the head, or a drugging with opium or other narcotics in childhood, and the like,—all which causes would have to be inquired into, and carefully estimated by the physician in forming his opinions professionally. It therefore inevitably follows, that in cases of this kind, the inquiry, to be complete, must be extended throughout the whole period of the past life. And none, with a sufficient knowledge of the subject, could read the evidence without coming to the conclusion that Mr Windham, as compared with other young men of his age and station, is congenitally defective in mental organization and development. Now, it is most certain that medical art can only say in all these cases what is probable; it pretends to no more in lunacy and imbecility than in any other diseases and defects, and it is often confessedly in error. But then this is inherent in the very nature of the questions to be solved; so that, however speculative the opinions of the cautious experienced physician may be, most assuredly those of any dozen ordinary men will be more speculative, and that just in proportion to their incapacity to elicit and weigh evidence, and their ignorance and inexperience.

Let us now suppose that the inquiry had been as to Mr Windham's sanity, and ask what would have been the course of procedure. It is obvious that the first question would be, whether he had ever been of sound mind; and this being determined, then when he became unsound. This change would be indicated by the usual symptoms of insanity, as hallucinations, delusions, unfounded suspicions, and the like, with incoherence of language, and incongruity of conduct. Now, according to all experience, the inquiry necessary to this end need not have extended, in a man like Mr Windham, farther back than two or three years. In older persons, and especially in slowly advancing cases of general paralysis, a longer time might be needed. But there was no symptom whatever of insanity given in evidence—all tended to prove imbecility alone. But mark how the legal dictum which confounds the two is applied by the Lord Chancellor. Because, as he justly argues, it is unnecessary to go back to childhood in insanity, he would prevent that which is necessary in imbecility.

But there is another defect in the legal dictum, of great importance. There are different degrees of capacity and incapacity in soundly constituted men; we are not all equally fitted to be Lord Chancellors, or even "mad-doctors:" *à fortiori*, there are different degrees in the congenitally imbecile. What, then, was the degree of incapacity as to which the jury had to decide in Mr Windham's case? Clearly whether he had the capacity to manage property worth several thousands per annum. Now, a youth of twenty-one may be competent to be an engine-driver, as Mr Windham appears to be, or a ploughman or day-labourer, although not competent to manage large estates or administer his income. I humbly submit, then, that the question which medical science and common sense would have put to a jury, untrammelled by legal *dicta*, would simply have been, whether Mr Windham's minority should be prolonged. But the law having had charge of him as a minor, and treated him as an imbecile by appointing tutors and governors to guide his imperfect boyish judgment, turns him loose on the world at the age of twenty-one exactly; and then, when the natural results follow, puts it to a jury, without choice of any alternative, not whether he is capable or not of managing the remains of his property, but whether he is *mad* or not. Now, I say that question was both false and foolish,—false as a question of medical science, and foolish as a matter of common sense. What, then, could



be expected from such an inquiry, except that which did happen? The examination of the "mad-doctors" was from the very method of procedure a farce; while the whole inquiry constituted unnecessarily a grievous wrong to an individual: and this because the law makes no difference between imbecility and insanity—between mental disease and mental defect.

To all this it may be answered, that modern systematic writers have classed mental defects, like idiocy and imbecility, with mental diseases, like mania and melancholia. This may be admitted as to some, but not as to all. The class of *Vesaniæ* of Cullen included both defects and diseases, but *insania* was carefully distinguished from *amentia* and *dementia*. Be this as it may, the jurist had already in the Roman law the practical method of procedure. This distinguished between prodigals from defect and incapacity, to whom it appointed *curatores*, and the *furiosi*, or properly insane. [*Sed solent hodie Praetores vel Praesides, si talem hominem invenerint, qui neque tempus neque finem expensarum habet, sed bona sua dilacerando et dissipando profudit, curatorem ei dare exemplò furiosi; et tamdiu erunt ambo in curatione, quamdiu vel furiosus sanitatem, vel ille sanos mores receperit; quod si evenerit, ipso jure desinunt esse in potestate curatorum.*—Ulpian, *Corp. Jur. Civ. Digestor. Lib. xxvii. tit. x. § i.*] In Scotland this part of the Roman law is in force at this moment; so that an imbecile or weak youth has curators appointed, without any inquiry into the metaphysical question whether he is of unsound mind or not.

The Lord Chancellor wisely proposes to legislate for another class of persons who are mentally defective from another class of causes. He would invest the Lord Chancellor with jurisdiction to provide for the care of aged persons who are in the state of second childhood, by surrounding them with the requisite protection, without the necessity of issuing a commission of lunacy. It is to be hoped, however, that in taking this necessary and too-long-delayed step, the learned lord will remember that, just as the age of discretion may be delayed from corporeal causes, so the period of senile dementia may be anticipated equally from corporeal causes. The natural decay of vital vigour in the brain, which is the cause of senile dementia, may occur prematurely, and be ushered in by disorder of the faculties. There are also cases of dementia simply, in which insanity precedes the final change, and which should be specially provided for. To this end, however, medical skill is most undoubtedly necessary; for the question here arises, whether this premature dementia is final and complete, or not.

Having thus cleared away cases of mental defect, let us now examine the Lord Chancellor's proposed procedure as to mental diseases, or the various forms of insanity. He says, it is a vicious principle to consider insanity as a disease in law; it is a fact to be ascertained in a like manner as any other fact; and for this purpose a jury of ordinary men is sufficient, and no medical opinions are needed. Now, we have lately had a judicial procedure as scandalous in its way as the Windham case, but far more shameful, in which this method was fully carried out. A man named George Clark, a cabinetmaker, killed a tax-collector in Newcastle on October 1, 1861, by stabbing him with a sharp-pointed knife. In the month of May preceding the collector had distrained upon Clark's tools for the non-payment of his dog-tax; and this was the alleged motive, as it was clearly the exciting cause, of the murder. He was tried on 27th February last, and defended himself. The history of his conduct previously and subsequently to the murder, and his conduct during the trial, abundantly proved that he was an aggressive melancholiac, labouring under notional insanity both at the time he committed the act, and when tried for it. The judge laid down the law of the case to the twelve "ordinary men" who constituted the jury, and who, in accordance with his charge, brought in a verdict of guilty; and then the judge solemnly pronounced the sentence of death. He told the helpless lunatic at the bar he



had no doubt, and the jury had no doubt, not only that when he committed the murder he was responsible for his actions, but also that he understood perfectly the whole of what he was doing in depriving himself of counsel and defending himself; otherwise he (the judge) would have postponed the trial or postponed the sentence. Then the judge solemnly exhorted the madman to repentance and prayer, and finally petitioned the Lord to have mercy on his soul.<sup>1</sup>

Such was the deliberate, solemn procedure in an English court of justice in the year 1862, in the case of a maniac who, being left loose in society by the law, became in due course amenable to the law. I do not say that murderous maniacs should not be hung; much might be said as to the expediency of that; but certain inhabitants of Newcastle, in common with all who value justice rather than expediency, were shocked with that sad outrage on justice perpetrated in the name of the law, and at once took vigorous and happily successful steps to prevent the hanging,—the humane judge helping them. The judge was not to blame in this case; remember, but the law. This he laid down clearly and plainly, and I may say with admirable although inexorable justice, as between the maniac murderer and society. The legal dicta being what they are, no other course was judicially open to him. Clark knew what he was about, and therefore he was responsible for his actions; however mad he might be, if he knew this he must suffer the penalty; that is the law. “In a well-known case,” he said, “the House of Lords put questions to the judges, and the judges answered them in this way.” If a man had a delusion and killed another in consequence of it, if that delusion would not in law justify a sane man in seeking vengeance, neither in law would it justify an insane man. And the judge added the theory of the law. “In point of fact,” he remarked, “the law does so because it acts upon people’s fears, and it endeavours to protect persons from the murderous attacks of others by acting upon the terrors of those who may feel disposed to do such attacks; and if a person has a particular delusion, but still has the power of knowing what he is doing, and that what he is doing is wrong, the law will make such a person responsible.” And so Clark was condemned to be hung.

Now, there is perhaps no more instructive example on record of the mischievous influence of an ill-considered speculation than the opinion of the Law Lords, to which the judge in this case referred the jury, and which guided his own course in the solemn administration of justice. It has more than the force of an Act of Parliament, but yet is a mere dictum of a number of gentlemen learned in the law; most learned in that—nevertheless, with no professional knowledge of that which they had to decide upon—namely, the nature of imbecility and mental incapacity, and the bearing of mental disease upon even their own theory of legal punishments. This dictum was duly explained by a learned judge to twelve ordinary men, all equally ignorant of the subject as the twelve judges. A maniac pled before them for his life, and yet he was held to be both morally responsible and capable of conducting his defence: the plainest facts of the case failed to bring out the common sense of the judge or the jury, weighed down by the legal *dictum*; and a maniac was not only found guilty, but solemnly sentenced to death. The judge wisely said “it would be folly—almost blasphemy—to punish a man for an offence to which he has been instigated not by his own guilty will, but by an infliction sent upon him by Providence itself,” and solemnly sentenced the man to be killed. But be it noted, on the next morning he wrote to Sir George Grey to express his doubts as to the man’s sanity.<sup>2</sup> A certificate of insanity was then duly signed by two competent

<sup>1</sup> The evidence bearing on the mental state of Clark, and the charge of the judge, are given at length and ably commented on in the *Medical Critic and Psychological Journal* for April last.

<sup>2</sup> The surgeon of the prison who had watched Clark for five months said he was insane; and the Medical Inspector of Prisons, sent by Sir George Grey, concurred.

physicians, and the catastrophe of a judicial—almost blasphemous—murder was obviated. But the Nemesis of legal error still pursued the Government, for the magistrates of Newcastle, already enlightened by the Lord Chancellor's expositions, refused to concur with the physicians, and declared that the grounds for the medical opinion were insufficient to constitute mental unsoundness. The man had been fairly tried, and duly and solemnly condemned, and they concurred with the "ordinary men" of the jury; so that it only remained for Sir George Grey to get the wretched man out of their custody by commuting his sentence to PENAL SERVITUDE FOR LIFE.<sup>1</sup>

It may be fully acknowledged that all this is law, but it most certainly is not justice. It is to be hoped, however, that so solemn a warning will not be lost upon those whose duty it is to lay down the law as to insanity. I need hardly say that the legal doctrine of the twelve judges, according to which Clark was condemned, is as contrary to common sense and truth as the proposition that any dozen of ordinary men are as able to detect insanity in general as the experienced practitioner. Daily experience rightly read, as well as medical science and experience, abundantly shows that a man or woman may be imbecile morally from cerebral disorder and disease, and yet have good intellectual, nay, high logical powers. There are many who, being thus diseased mentally, drink to drunkenness, fornicate, lie, steal; are obscene, homicidal, cruel, malicious—in spite of a knowledge of right and wrong, and with the reasoning powers little, if at all, affected; and whatever the law may decide to the contrary, the inexorable logic of facts will hold its own. It is in vain, alarmists and opponents of these facts tell you, that there are more drunkards than would fill existing asylums thrice over; in vain, they say, if you treat every imbecile knave as irresponsible, you must convert all jails and prisons into asylums; in vain they express their alarm that if these doctrines be admitted as true the foundations of the social fabric will be shaken; the truth is not less the truth, and I take leave to say, that until it is carefully inquired into by our legislators and made available to the reformation or proper restraint, rather than the punishment of imbecile criminals, the same scandalous routine will be followed with the criminal population as hitherto, and which is contrary to even the simplest principles of Christian morals. The question is one in which medical science, ethics, and common sense are in perfect accord. It may be laid down as a first principle that the capacity of an individual to be influenced by the motives which influence the average of mankind in health and soundness, is the measure of his moral responsibility to society and of society to him. He may be a mere child in moral development as well as in judgment, and when this is proved in the case of an idiot or congenital imbecile, the plea of irresponsibility to society is admitted, and society becomes responsible for him and to him, and keeps him out of harm's way. In like manner, the cases of notional, impulsive, and vicious imbeciles might be treated; the capability of self-control being the practical question to be decided by a jury, and not the amount of knowledge. Thus, for example, in the case of an alleged vicious lunatic, the question to be raised is not whether he is insane or not, but whether he is capable of controlling his impulses to vice or not. Like the question of imbecility of judgment, it is to be solved jointly by common sense and medical experience; if found incapable he should have his appointed guardians or curators until restored *ad sanos mores*.<sup>2</sup>

The same principle applies equally to those criminal imbeciles which con-

<sup>1</sup> The prosecution, suspecting that Clark was feigning madness, sent Dr Macintosh to examine him, who reported that he was insane.

<sup>2</sup> I read in the police reports of a large city in England the following:—"John Smith was charged with being drunk and disorderly, and was committed to the house of correction for seven days, making 36 committals."



stitute the chief part of the inerrigibles in the criminal population. They are all held in law to be entitled to uncontrolled freedom; and thus the criminal imbeciles, as well as the vicious, become more certainly mischievous to society. Practically, under the influence of this principle, detention and restraint would still be the fate of the criminal population, but mercy and not vengeance would be the aim and the result of its operation.

There is yet another question I must touch upon. You will have observed that the Lord Chancellor spoke of "mad doctors" when he wished to designate those members of the medical profession who, like the philanthropic Dr Conolly and others, are specially occupied with the treatment of mental diseases and defects. It is undoubtedly a contemptuous term of vulgar origin, and one cannot understand why it should be so readily and so freely used in such high quarters. Even another noble lord occupying the high official position of Chairman of the Commissioners in Lunacy for England not only used the term, but expressed himself in a manner which must be held to be unfavourable and disparaging to the whole medical profession. The Earl of Shaftesbury is reported to have said, that "from his own experience of many years on the Commission of Lunacy, he could affirm that medical men who had not made the subject a special study, were as ignorant of mental disease as any one who observed it for the first time." And then the noble commissioner, forgetting the exception he had made in his sweeping denunciation of the profession at large, in favour of the specialists, proceeded to detail the particulars of a case in which he differed in opinion with a specialist as to whether a certain lady was insane, and remarked, "a person calling himself a mad doctor, said the lady must be insane, because she wore a dagger." The noble commissioner is undoubtedly misreported here. It is inconceivable that any physician specially engaged in the management and treatment of the insane would designate himself by so vulgar and contemptuous a title as "a mad doctor." Nay, it is almost inconceivable that the noble lord would use such a term himself in speaking of a physician of this class. For any language which tends to bring the status of such physicians into contempt, tends necessarily to limit their usefulness, while, at the same time, it deters the best minds from entering upon that department of practice. The phrase "mad doctor" has also its effect upon those whose misfortune it is to be deprived of their reason; because calculated to obstruct that flow of sympathy and kindness which they especially need more than any other of the sick and infirm. Any one acquainted with the insane knows what tact, what skill, what moral courage and fortitude, and what thorough conscientiousness are needed in their attendants and guardians, and how difficult it is to meet with persons who have these necessary qualifications. But if madmen, madhouses, and mad doctors be brought into contempt by the language used in high quarters, how greatly are the difficulties increased in this respect! Of this the noble commissioner must be fully aware, simply as a person of common sense conversant with the world, and having a practical knowledge of mankind, if not of asylums, for I presume the visitation of these is not included amongst his Lordship's duties.

But a more terrible evil is inflicted upon the insane even before they reach an asylum. It is the peculiarity of insanity as a disease, that it cannot be treated effectually at home, or with the concurrence of the patient; he must be withdrawn, usually against his will, from all those stimuli to excessive mental and cerebral activity, which, probably, have mainly caused his malady, and which he too vigorously seeks. Hence the need that he be removed to a suitable place where his over-excited brain may have rest. Now, what is the effect on treatment and cure of this contemptuous discredit of lunatics, their asylums, and their physicians? The patient and his friends look upon the adoption of the best and only means of cure as a frightful calamity; they dread the stigma



that will thereby attach to him and his children, if the head of a family, and too often the removal from home takes place at last when all hopes of cure are gone. How often do we see a sound understanding wrecked, estate wasted, a family impoverished, and the stigma finally incurred in its most aggravated form, when a few weeks early and suitable treatment would have saved all! The Lord High Chancellor was justly eloquent as to the expenses alleged lunatics were made to incur by judicial inquiries; the whole system is in truth a disgrace; but what is the loss of a few thousands of pounds when compared with the mental agony and slow torture, ending finally in mental death—worse than death itself—which the educated lunatic is too often thus most unnecessarily compelled to endure? It is not possible to estimate the benefits which would accrue to thousands of individuals, and to the public at large, if all these prejudices were removed, so that the sufferer from impending mental disease could at once avail himself of the best means of cure as readily as if he had a pleurisy. It is a horrible thing to witness, as I have witnessed, the gradual clouding over of a fine intellect, and to hear the poor patient exclaim, with the late George the Third, who drew his son, the Duke of York, aside, and bursting into tears, said—"I wish to God I might die, for I am going mad!"<sup>1</sup>

But setting aside the argument of kindness and sympathy for these sad sufferers, it is of importance that early treatment should be facilitated in every possible way, from pecuniary considerations. The numbers of the insane living are constantly increasing—partly from increase of population, partly from the longer duration of life of the insane—so that asylums cannot be built fast enough or large enough for the incurables who are destined to linger on for many years in seclusion, and often despair. The remedy for this increase is twofold—namely, a more general knowledge of the nature of insanity, and of what induces it, and prompter treatment in the early stages by the ordinary practitioner. Whatever obstructs these essentials adds, in truth, to the national burden; whatever facilitates them tends to diminish it. Now, if the public has done little in this direction, I think the heads of the medical profession might have done more than they have. Unquestionably, it is an exaggeration to say, with Lord Shaftesbury, that those medical practitioners who are not specially engaged in the management of the insane, are as ignorant of mental disease as any lay person who has seen an insane person for the first time; for even the delirium of fever, or of wounds, or of the drunkard, is but a kind of mental disorder, and is too often witnessed in ordinary practice, not to teach the medical practitioner something of the nature of mental derangement. Nevertheless, the profession at large, it must be admitted, has not a sufficient theoretical and practical knowledge of the subject. But with whom rests this defect? The medical student is not required to make mental science in relation to pathology and therapeutics a special study either theoretically or practically; nor is he specially examined in it by the examining boards; and, when called to a case in private practice, he rarely sees its whole course and termination, as the patient is necessarily removed to a suitable house. There is thus no stimulus to the study of mental diseases, or to the scientific development of mental science in its practical applications; and in this way it happens that there are such diverse opinions and imperfect theories, and such

<sup>1</sup> It is much to be feared that the opinions expressed in the House of Lords will seriously increase the litigation to which the profession is exposed when signing certificates of lunacy, and which has entailed grievous loss upon Scottish physicians, although successful in the law plea. An Edinburgh physician, one only of several defendants in a late law-plea of this kind in which he was successful, has suffered a large pecuniary loss, besides much anxiety and waste of time, and has now to follow his antagonist to the House of Lords, and incur fresh trouble and expense in meeting the appeal of the pursuer. It is quite certain that this persecution of the practitioner, in the exercise of a painful and thankless duty, is already operating most injuriously on the welfare of families, by interfering with the early removal and treatment of the insane.

speculative doctrines advanced by the profession. And I cannot but think that it would have been more satisfactory to the nation if these two noble lords, who, in their official capacity, have thus denounced the medical profession for its deficiencies, had taken the one simple and effectual means to remedy those deficiencies—namely, had expressed an opinion to the Medical Council and medical examining boards of the United Kingdom, as to the propriety of steps being taken to develop courses of instruction in mental science in relation to mental diseases and defects in every medical school of the United Kingdom. If to these be added suitable facilities for private treatment in houses managed by competent physicians; and if esteem rather than contempt be shown towards those who have duties to perform demanding the highest professional attainments and the noblest moral qualities, a check would soon be given to the ever-increasing number of the imbecile and insane.

From whatever point of view we look at the present position of mental science and of its practical applications to mental diseases, and to the administration of justice, it must be confessed that it is intolerable, and a disgrace to us as a nation. It is no longer to be endured that the courts of law and schools of medicine should be at issue as to the fundamental question, whether insanity be a disease or not, and as to all its important practical applications. It is quite certain that there can be no withdrawal therefrom on the side of the profession, for to that principle and its applications must be attributed the rescue of the insane from the state of degradation and the cruel usage of which they were the victims at the close of the last century: on the contrary, it will be more and more developed, for to recede would be to reverse medical progress, and stop all the large advance in mental science made of late years.

*P.S.*—In a criticism of this lecture it has been stated that I had no right to condemn the present state of legal pathology and of procedure in cases of insanity until I was prepared to state what other recourse is open. The Lord High Chancellor has laid down the only principle in a quotation from the work (to use his own words) “of a very admirable commentator, Mr Smith, who had died much too early.” “The opinion of witnesses possessing peculiar skill,” Mr Smith says, “is admissible whenever the subject-matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment on it without assistance—in other words, where the matter so far partakes of the nature of a science as to require a course of previous habit and study in order to the attainment of knowledge with regard to it.”<sup>1</sup> A course of previous habit and study is unquestionably necessary for the attainment of knowledge in regard to mental diseases and defects, and, I would venture to add, not only for the purpose of giving evidence thereon, but for sifting and valuing that evidence judicially. Seeing this truth, “*The Times*” has suggested that physician-experts should sit with the judge and aid the Court in trials of this kind.<sup>2</sup>

<sup>1</sup> *Times*, 25th March 1862.

<sup>2</sup> Leader of *Ibid.*